MALTA

QORTI CIVILI

PRIM' AWLA

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tat-28 ta' April, 2015

Citazzjoni Numru. 793/2014

Central Mediterranean Development Corporation Limited

vs

Acorn Properties Limited

Il-Qorti,

Rat ir-rikors guramentat tas-socjeta attrici tal-11 ta’ Settembru 2014 li jghid hekk:

1. Illi permezz ta' kuntratt fl-atti tan-Nutar Dottor Clarissa Cuschieri datat 21 ta' Ottubru 2009 – Dok. C1 - is-socjeta konvenuta kienet rregolarizzat l-posizzjoni taghha vis-a-vis proprjeta li ghandha Santa Maria Estate, il-Mellieha u bhala konsiderazzjoni ghal emendi fil-kondizzjonijiet enfitewtici hija kellha thallas is-somma ta' tmienja u hamsin elf mitjen erbgha u tletin euro (€58,234) lis-socjeta rikorrenti;

2. Illi s-somma ta' disgha u ghoxrin elf mija u sbatax-il euro (€29,117) kienet thallset presenzjalment meta sar l-kuntratt u r-rimanenti somma ta' disgha u ghoxrin elf mija u sbatax-il euro (€29,117) kellha tithallas fi zmien tlett snin mid-data tal-kuntratt, bir-rata ta' interessi bit-tmienja fil-mija (80%);

3. Illi l-ewwel pagament kellhu jigi effettwat fil-21 ta' Ottubru 2010, t-tieni pagament fil-21 ta' Ottobru 2011 u t-tielet pagament fil-21 ta' Ottubru 2012;

4. Illi s-socjeta konvenuta ma effettwat l-ebda wiehed minn dawn il-pagamenti u ghalhekk is-somma ta' disgha u ghoxrin elf mija u sbatax-il euro (€29,117) ghadha dovuta;

5. Illi l-interessi bir-rata ta' tmienja fil-mija (8%) jammontaw ghal hdax-il elf tmien mija tmienja u tletin euro u hamsa u ghoxrin centezmu (€11,838.25);

6. Illi minbarra dan, is-socjeta konvenuta qatt ma hallset is-subcens dovut lis-socjeta rikorrenti, kif jidher mill-kuntratt fl-atti tan-Nutar Dottor Robert John Muscat datat 9 ta' Gunju 2006 - Dok. C2 - mill-1 ta' Ottubru 2009 sat-30 ta' Settembru 2014, u li ghalhekk is-socjeta konvenuta tinsab moruza fil-pagament tas-subcens ghal hames skadenzi, li jammonta ghal mitejn wiehed u disghin euro u hmistax-il centezmu (€291.15);

7. Illi ghalhekk s-socjeta konvenuta hija debitrici vera, certa u likwida fl-ammont komplessiv ta' wiehed u erbghin elf mitejn sitta u erbghin euro u erbghin centezmu (€41,246.40), u s-socjeta konvenuta m'ghandhiex eccezzjonijiet x'taghti, a tenur tal-artikolu 167 tal-Kodici ta' Organizazzjoni u Procedura Civili u s-socjeta rikorrenti qeghda tipprezenta affidavit anness ma' dan r-rikors guramentat u mmarkat bhala Dok. C3;

8. Illi ghalkemm interpellata diversi drabi sabiex thallas dan l-ammont, anke b'ittri ufficjali numru 3910/2011 u 1665/2011 – Dok. C4 u Dok. C5, is-socjeta konvenuta baqghet inadempjenti;

TGHID ghalhekk is-socjeta konvenuta ghaliex din l-Onorabbli Qorti m'ghandhiex:

1. Tghaddi sabiex tiddeciedi skond it-talba tas-socjeta rikorrenti bid-dispensa tas-smigh skond kif mahsub fl-artikolu 167 tal-Kodici ta' Organizazzjoni u Procedura Civili u b'hekk tikkundanna lis-socjeta konvenuta thallas l-ammont ta' wiehed u erbghin elf mitejn sitta u erbghin euro u erbghin centezmu (€41,246.40) kif premess;

Bl-ispejjez, inkluzi dawk tal-ittri ufficjali 3910/2011 u 1665/2011.

Rat ir-risposta guramentata tas-socjeta konvenuta li tghid hekk:

1. Illi s-socjeta ntimata tirrileva illi l-pretensjonijiet tar-rikorrent huma f'dan l-istadju nfondati fil-fatt u fid-dritt, stante illi nsegwitu ghal kuntratt datat 21 ta' Ottubru 2009 in atti tan-Nutar Dottor Clarissa Cuschieri, hija kellha ftehim verbali mas-socjeta rikorrenti li kwalsiazi ammonti talvola dovuti skond il-kuntratt precitat, kellhom jithallsu fil-mument illi jinbieghu z-zewg plots rispettivament gia maghrufa 221, 'Il-Wied ta' Ghajn Zejtuna', Mellieha, u dana kif ser jkun ahjar pruvat waqt it-tratazzjoni tal-kawza.

2. IIli sa mill-bidu nett il-pretensjonijiet tas-socjeta rikorrenti nibtu fil-mument illi l-eccipjenti qasmet il-plot numru 221, 'Il-Wied ta' Ghajn Zejtuna', Mellieha f'zewg plots izghar uwara li tibni zewg villel, ossia villa fuq kull plot, ddecidiet li tbieghhem separatament. Kien f'dan il-kuntest illi s-socjeta rikorrenti bdiet tippretendi illi s-socjeta intimata kellha thallas s-somma fenominali ta' disa u ghoxrin elf, mija u sbatax-il ewro (Euro 29,117) ghal kull plot u dana sabiex inghata l-permess li l-plot 221 jinqsam f'zewg porzjonijiet izghar u jbieghhom. Illi kien ghalhekk u ukoll f'dan il-kuntest illi l-ftehim bejn il-partijiet hawn fuq imsemmi gie milhuq.

3. Salvi eccezzjonijiet ohra.

Rat l-atti u l-provi prodotti;

Rat li l-kawza thalliet ghas-sentenza.

Ikkunsidrat

Is-socjeta attrici qed titlob il-hlas ta' somma flus inkluz imghax kif miftiehem b'kuntratt notarili tal-21 ta' Ottubru 2009 atti Nutar Dottor Clarissa Cuschieri. Il-klawsola rilevanti tghid hekk:

> The above mentioned waiver and concession are being made for the consideration of fifty-eight thousand two hundred and thirty-four Euro (€58,234), which sum relates as to twenty-nine thousand one hundred and seventeen Euro (€29,117) to

portion 'A' of plot 221 and as to a further twenty-nine thousand one hundred and seventeen Euro (€29,117) to portion 'B' of plot 221.

The Grantee is paying to the Grantor, which accepts, the sum of twenty-nine thousand one hundred and seventeen Euro (€29,117) together with the interest at the rate of eight per cent per annum (8% p.a.) on the said sum amounting to seven hundred and twenty-one Euro and fourteen cents (€721.14c), with effect from the first day of July of this current year. [that is for one hundred and thirteen (113) days] in full and final settlement of the sum due on portion 'A' of plot 221, and for which the Grantor hereby grants fmal acquittance.

The Grantee hereby binds itself to pay to the Grantor, the sum of twenty-nine thousand one hundred and seventeen Euro (€29,117) which accepts, within three (3) years from today, and this at interest of eight per cent per annum (8% p.a.) reckonable from the first day of July of the current year, and calculated at a reducing rate (a scaletta).

It is hereby being clarified that the first payment is due one year from today that is on the twenty-first day of October of the year two thousand and ten (21st October, 2010), the second payment is due on the twenty-first day of October of the year two thousand and eleven (21st October, 2011) and the final payment shall be due on the twenty-first day of October of the year two thousand and twelve (21st October, 2012). Each of the three instalments paid as indicated above amount to nine thousand seven hundred and five Euro and sixty-seven cents (€9,705. 66c) per annum.

The Grantee shall have the option of paying the full amount still due, together with interest accruing thereon, before the lapse of three (3) years. If the Grantee does not pay for the three instalments whether consecutive or not, the Grantor shall have the right to demand payment of the full amount.

Is-socjeta attrici qed tikkontendi wkoll illi s-socjeta konvenuta naqset milli tonora l-ftehim.

In oltre l-istess socjeta attrici qed titlob il-hlas tas-subcens dovut bejn l-1 ta’ Ottubru 2009 sat030 ta’ Settembru 2014 skond il-kuntratt tad-9 ta’ Gunju 2006 atti Nutar Robert John Muscat (fol. 20 et seq.).

Id-direttur tas-socjeta konvenuta fl-affidavit jammetti illi l-hlas dovut skond il-ftehim tal-2009 ma sarx pero jallega illi intlahaq ftehim mas-socjeta attrici illi l-hlas isir darba li tinbiegh il-villa soggetta ghal tali hlas miftiehem bejn il-partijiet, liema hlas kien il-kontrokambju tal-kuntratt fejn saret koncessjoni favur is-socjeta konvenuta.

Dan il-ftehim hu ghal kollox innegat mid-direttur tas-socjeta attrici Albert Mizzi fl-ezami li sarlu quddiem il-Qorti. Hu insista li fl-ebda hin ma kien hemm xi kambjament fil-ftehim raggunt bejn il-partijiet bil-kuntratt tal-2009.

Rinfaccjat b’dawn il-fatti hi l-fehma tal-Qorti illi l-kuntratt bejn il-partijiet tal-2009 kien jikkostitwixxi vinkolu u ligi bejn l-istess partijiet li ghandu jibqa’ vigenti u validu sakemm ma tingiebx il-prova jew ta’ rinunzja ghal effetti tieghu jew il-bdil jew sostituzzjoni tieghu b’kitba ohra. F’dan il-kaz is-socjeta konvenuta ma gabet ebda proa ta’ dan, liema prova trid tirrizulta b’mod car u inekwivoku.

It-talba attrici hi wahda li tisthoqqilha tigi milqugha billi l-ftehim jikkontempla d-dritt li s-socjeta attrici tesigi l-hlas tas-somma u imghaxijiet jekk il-hlas ma jsirx fit-terminu prefiss ta’ tlett snin mill-2009. In oltre s-socjeta attrici esigiet il-hlas permezz ta’ ittri ufficjali 3910/2011 u 1665/2011.

In kwantu ghat-talba ghal hlas ta’ arretrati ta’ subcens is-socjeta konvenuta lanqas resqet xi forma ta’ cahda dwarha u ghalhekk it-talba attrrici tirrizulta gustifikata anki f’dan l-aspett.

Decide

Ghalhekk il-Qorti taqta’ u tiddeciedi billi tilqa’ t-talba attrici u tikkundanna lis-socjeta konvenuta thallas lis-socjeta attrici s-somma ta’ €29,117 dovuta skond il-kuntratt tal-21 ta’ Ottubru 2009 atti Nutar Clarissa Cuschieri oltre l-imghax dovut ta’ €11,838.25 sad-data tal-prezentata tal-kawza cioe 11 ta’ Settembru 2014, kif ukoll il-hlas ta’ €291.15 hlas ta’ subcens dovut skond il-kuntratt tad-9 ta’ Gunju 2006 atti Nutar Robert Muscat b’kollox €41,246.40 oltre l-imghaxijiet mid-data tal-prezentata tal-kawza sad-data tal-effettiv pagament. Spejjez jithallsu mis-socjeta konvenuta.

< Sentenza Finali >

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